RAS 10463

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before the Administrative Law Judges:
Lawrence G. McDade, Chairman
Paul B. Abramson
Richard E. Wardwell

In the Matter of	Filed September 6, 2005
USEC Inc. (American Centrifuge Plant)	Docket No. 70-7004

Geoffrey Sea's Reply to Answer of USEC and Response of NRC Staff to Filings of August 17

On August 17, 2005, Petitioner Geoffrey Sea requested leave to supplement his replies to USEC and NRC staff, and filed such replies, in conjunction with amended contentions based on new information. On August 29, 2005, NRC Staff filed a response to the filings and USEC filed an answer to the filings: NRC Staff Response to Geoffrey Sea's Motion to Supplement Replies and Amended Contentions (hereinafter "NRC Staff Response"); USEC Inc. Answer to Geoffrey Sea Motion for Leave to Supplement Replies and Amended Contentions (hereinafter "USEC Answer"). On August 31, the Atomic Safety and Licensing Board Panel issued a Memorandum (Status Report), expressing the Panel's intention to rule on the admissibility of Petitioner's contentions in the month of September. Herein is Petitioner's Reply to NRC Staff's Response and USEC's Answer.

TEMPLATE = SECY-037

SECY-02

PETITIONER HAS GOOD CAUSE FOR ITS LATE-FILED AMENDMENTS TO ITS CONTENTIONS.

USEC argues that Petitioner's motion is untimely because it was filed more than ten days after the occurrence from which the motion arises. USEC Answer at page 3, citing 10 C.F.R. § 2.323(a). Petitioner does not believe, however, that the language cited by USEC 10 C.F.R. § 2.323(a) applies to the late-filing of contentions. For a number of years, the Commission has accepted late-filed contentions that are submitted within 30 days of receipt of new information by a petitioner. *See,* for example, *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-13, 53 NRC 478, 484-86 (2001), in which the Commission set "milestones" for an adjudication in which the interveners were allowed 30 days after the issuance of the Environmental Impact Statement and Safety Evaluation Report for the submission of late-filed contentions regarding those documents. The Atomic Safety and Licensing Board has also followed the 30-day rule of thumb for late-filed contentions in *Private Fuels Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-27, 52 NRC 216, 221-222 (2000); and *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), LBP-02-05, 55 NRC 131 (2002), *affirmed on other grounds,* CLI-02-27, 56 NRC 367 (2002).

In the preamble to the new procedural regulations that include 10 C.F.R. § 2.323(a), the Commission did not discuss the meaning of the phrase "occurrence or circumstance giving rise to the motion" as it is used in Section 2.323(a).[1] The Commission did, however, specifically state that it had not changed the late-filed

[1] In fact, the language was not included in the proposed version of the rule [66 Fed. Reg. 19610, 19,641 (April 16, 2001)], but was added to the final rule without notice or explanation. 69 Fed. Reg. 2,182, 2,244 (January 14, 2004).

contentions standard in any significant way. *See* 69 Fed. Reg. at 2,220 ("For those proceedings for which a Federal Register notice has been published, the requirements are much the same as those in former § 2.714(a)(1) . . .") In the absence of any specific discussion of changes to the late-filing standard, it is reasonable to presume that the "occurrence or circumstance" that must be responded to within ten days does not include the receipt of new information for the purpose of filing late-filed contentions, but rather consists of decisions by the Licensing Board or filings by other parties. Therefore, Petitioner believes that he has good cause for filing his late-filed contentions, because he submitted them within 30 days of receiving the information on which they are based.

USEC also argues that Petitioner's amended bases should be rejected because Petitioner did not explicitly address the standard in 10 C.F.R. § 2.309(f)(2). USEC Answer at 6. But Petitioner has gone to great lengths to show that the information on which he relies was previously unavailable, that it is materially different than previously available information, and that it is timely. Thus, Petitioner has satisfied the requirement.

Both USEC and NRC Staff follow the precedent established by USEC when USEC attempted to bar admission even of the Petitioner's deed to the Barnes Home, attempting to block the way toward recognition of Petitioner's standing (USEC's Motion to Strike Information in Replies by Geoffrey Sea to Answers of USEC Inc. and NRC Staff, filed April 8, 2005, and subsequent filings). Indeed that precedent is enlightening because USEC then argued that the procedure used by Petitioner to introduce new facts about his standing did not comply with the rules for late filing of material related to contentions. Now that Petitioner is indeed following the correct procedure for

introducing new information related to contentions, USEC argues that this too should be barred. USEC wants nothing admitted, no time, no way.

USEC reaches to find ways to accuse the Petitioner of delay that is actually the fault of USEC itself. For example, on page 2, USEC bemoans the Petitioner's "eleventh hour request for an extension of time to file his petition." USEC fails to mention the salient fact that all of the documentation for the case was then withheld from public access pending security review. A proper Petition could not then be prepared. And so the extension of time was granted *pro forma* by the Commission, in response to requests from six different parties.

As Petitioner has demonstrated, the material facts of this case have changed, in ways that go to the heart of the issues in dispute. We did not previously know that the GCEP Water Field Site has been leased and controlled by USEC for the past twelve years and that USEC contracted with DOE for exercise of oversight responsibilities at that site. (Not even everyone at DOE knew this. When Petitioner first approached the manager of the DOE field office, Bill Murphie, about the water field site in question, Mr. Murphie was unaware that DOE even owned land along the Scioto River.)

Moreover, we now know that a pre-modern earthwork crosses that site, in the midst of the well-heads, and that required steps to protect that earthwork under the National Historic Preservation Act and the Archaeological Resources Protection Act were not taken by any party. The earthwork and the potential impacts upon it are real. They exist in the concrete world. They do not disappear with a procedural wave of the hand. The responsibilities of NRC and DOE (and contractually by USEC) are real. They are at issue. And they do not disappear because of some allegation that they weren't

brought to the attention of the Panel at a time and place and manner determined by one of the parties responsible for the negligence.

We now know, as we did not know in February, that USEC has encountered severe problems with its centrifuge design, with investor confidence, with its ability to raise capital, with the erosion of its profit centers, and with the marketability of its speculative product. All of this makes sustained commercial operation and success of ACP highly dubious, and this goes to the heart of Petitioner's fear that ACP will proceed, if licensed, only so far as to contaminate the land and buildings, destroy nearby historic properties, and distort the local economy, but not so far as to achieve any of the benefits for the community promised by USEC. These facts do not disappear with a procedural wave of the hand.

We now know, as we did not in February, that actual alternative use plans are in place involving transfer of former DOE nuclear production sites to the Department of Interior for mixed use as wildlife refuge and non-nuclear technology development. This goes to the essence of Petitioner's contention on alternative use, and the fact doesn't disappear just because USEC wants it shrouded.

We now know, as Petitioner could only speculate in February, that ACP will involve (and has already) the opening and refurbishment of the southwest access road, immediately adjacent to and impacting the Petitioner's historic home and land. That fact doesn't change because USEC claims information wasn't filed correctly.

The most important justification for this and any late-filed submission is that the material facts have changed, in ways of which the Panel must take cognizance. In this case they have, and the Petitioner has presented those changed facts to the Panel,

together, following the Panel's advice not to do so "in bits and pieces," in as timely a way as has been possible under the circumstances.

While USEC accuses Petitioner of a lack of timeliness, the record shows that USEC bears responsibility for much of the delay in this proceeding. USEC accuses the Petitioner ("and others," whom USEC does not name) of attempting to delay the proceedings "from the very beginning" (page 2). On the contrary, on the critical issue of the Water Field site, USEC is responsible for the entire delay. USEC has leased and controlled that site for more than twelve years, though this has not been public knowledge. At any point over those twelve years, USEC could have initiated the proper process under section 110 of NHPA to ensure that the Ohio Historic Preservation Office, the Advisory Council on Historic Preservation, the Library of Congress, and the public knew about the earthworks, had them investigated and assessed, and the proper records were kept and filed. USEC could have included information about these earthworks in its Environmental Report on ACP. And if USEC itself has been unaware of the earthworks (we don't actually know since USEC continues its silence on the issue)—once the Petitioner raised the issue, USEC could have acted to start the Section 110 process rolling, to grant access to the site for qualified professional assessment, and, at the very least, to inform the Commission and the ASLB Panel that USEC did indeed lease and control the site. USEC did none of this. Instead USEC played mum, and it continues to play mum, and this is the essence of the delay.

USEC has adopted another strategy of trying to mask any impact at the GCEP Water Field site by never referring singly to this site. Instead, USEC only refers to all the water wells that supply the entire DOE reservation and to the entire span of the

reservation's existence from 1952 to present. Thus, on page 5 of USEC's latest filing, USEC introduces the entirely new argument, without citation to authority, that all of the water wells at all DOE water fields draw water from a single aquifer. Has USEC employed a hydrologist to study the question? They don't say. Has USEC considered that pumping water from directly within and underneath an earthwork might affect that earthwork through subsidence or erosion on the surface—even if the underlying aquifer is shared? They don't say. Not only don't they say, but they want the whole question barred from contended hearing, barred from inquiry, barred from public debate.

To be clear, the Petitioner has no legal responsibility to pursue preservation of those earthworks on DOE/USEC land, to follow any procedure at all with regard to them, or to inform anyone about what he has discovered. Petitioner has pursued the course he has out of pure commitment to the goals of historic preservation. It is the zeal of USEC and NRC Staff to find some procedural flaw in Petitioner's actions that blinds them to the material facts of the matter.

For example, NRC Staff hinges its argument about untimeliness on the fact that Petitioner "apparently failed to 'follow[ ] up' on the request [for a site visit by professionals] until Mid-March 2005 – a few weeks after his initial petition was filed" (page 6). NRC Staff continues on page 6: "Mr. Sea cannot leverage his failure to pursue a site visit into good cause for late-filing. Further, Mr. Sea has provided no explanation for his delay in pursuing a site visit between the December 2, 2004 meeting where he initially sought a site visit and the post-petition contact in March 2005." USEC makes precisely the same point about the "delay" from December to March on page 9 of its Answer. Again, on page 10, USEC states, that "Petitioner apparently took months to

follow-up on DOE's offer of a site tour." (Note the nearly identical phrasing of the USEC and NRC Staff attacks on this point.)

The subject here is communications between Geoffrey Sea, before he even filed his petition, and the Department of Energy, a party that USEC and NRC Staff have claimed is beyond the scope of these proceedings. The communications were not primarily about a site visit but about how DOE intended to fulfill its responsibilities under Section 110 of NHPA. NRC Staff has specifically maintained that the entire subject of Section 110 is "beyond the scope" of these NRC proceedings. But now the Staff wants an entire conversation about Section 110 between DOE and a private individual to play a role in determining the timing of the licensing proceedings. See, that's the Petitioner's point about how integral Section 110 issues on DOE land are to these proceedings. We can now presume that NRC Staff has changed its position and now believes that DOE's implementation of Section 110, or lack thereof, is a proper subject for discussion in these proceedings.

Petitioner reiterates that he had absolutely no obligation or ability to consider the procedural aspects of these proceedings, before he even filed a petition to intervene and before he even was able to read the ACP Environmental Report. (The conversation with Bill Murphie took place on December 2, 2004. The Environmental Report on ACP was then withheld pending security review and was not publicly released until December 30, 2004. It was Petitioner's hope and expectation that the Environmental Report would indeed discuss the earthworks on the Water Field site and would shed light on the subject. That hope was disappointed.)

Why would a sane person not pursue an exploratory visit to a *water* field site in a *flood* zone along a *river* in *Ohio* between the months of *December* and *March*? Petitioner did not imagine that such a thing requires explanation. Petitioner can think of about a hundred reasons why such a visit was not and should not be pursued until March. Here are the top five:

1. It's *wintertime*. Wetlands in rural Ohio tend to be covered with *snow* and *ice* during these months. The site can easily be both impassable and inaccessible. (The long road to that site is not paved and requires a 4WD vehicle even at the best of times.) When Bill Murphie and I discussed the idea for a site visit on December 2 in Piketon, we shared the understanding that it would not occur until Spring at the earliest. (DOE did not then "offer" a site visit as suggested by USEC.) Petitioner contacted DOE in mid-March in anticipation of Springtime; it had nothing to do with the timing of the petition.
2. The principal goal of finding and identifying an earthwork in the wintertime likely cannot be accomplished. Snow, ice and flood waters obscure the terrain, and vegetation (which gives clues to soil type) is not observable. Since we likely would be restricted to visual inspection (as USEC did indeed restrict us), we would not be able to remove snow cover, even if we succeeded in finding a suspect earthwork. Furthermore, since I had originally been to the site in October, I would likely not be able to orient myself on the site in winter.
3. In Ohio, archaeologists don't do field work in winter, with certain special exceptions like aerial photography. It would be impossible to get a team of

professionals willing to visit that site in winter, giving them no reason for the unseasonal work other than bureaucratic demand.

4. Obvious safety hazards would be involved, and this would violate DOE and USEC rules for site visits. When we planned the visit with DOE for July 14, DOE cancelled the visit "because of weather" on threat of a drizzle. When we rescheduled the visit for August 5 with USEC, Petitioner asked that it proceed despite any weather conditions. USEC's Angie Duduit replied that as "safety always comes first," the visit would have to be cancelled if any weather condition presented any potential hazard.
5. Even if we got professionals to the site in winter, and we found the earthworks, no significant findings could be reported because much of what needs to be seen cannot then be seen. It should be noted that typical conditions along that part of the Scioto River place much of the land under water for much or most of the winter.

Again, Petitioner had no reason or obligation to proceed with haste before he could even read USEC's Environmental Report. But the Petitioner did proceed with haste to obtain a site visit by professionals anyway, as soon as that was feasible. At any time, USEC could have stepped forward to grant site access. That this was delayed until August 5, 2005, was entirely the fault of USEC. (USEC could have and should have opened the site to professional assessment in August of 1993). And since NRC Staff's argument about untimeliness hinges on its blindness to seasonal change in temperate climates (which makes one worry about NRC's general level of technical analysis), its claim that Petitioner did not proceed in a timely manner fails.

In regard to impact, NRC Staff plays word games. The Staff says (page 8) that the expert declaration provided offers "no support for Mr. Sea's assertion that it [water pumping] will impact the alleged earthworks."

"Alleged earthworks"? Are earthworks there or not? What is USEC's position? What is NRC Staff's position? At this late stage, has NRC Staff not undertaken the requisite inquiries to determine if there are really earthworks on that site or not? Petitioner notified DOE about the earthworks on December 2, 2004. Petitioner first notified NRC about those earthworks at the ACP scoping meeting in Piketon on January 17, 2005. After nearly eight months, NRC Staff has no opinion about the existence of those earthworks? And it accuses the Petitioner of delay? Worse than NRC Staff, USEC, on page 15 of its Answer, only states that "no 'historic property' has been confirmed to exist on the X-6609 well field site." Well? USEC is the party that controls that site. According to USEC, is there a historic property there or not? If this does not go to hearing, how will the public ever learn if an ancient earthwork lies there on public land?

The question of potential impact unfolds consequentially once one grapples with the fact of pre-modern earthworks at that site. It was DOE and USEC's responsibility to make those earthworks known, to make them available for assessment, and to study the potential impacts of water pumping underneath them, going back to 1977, when a gas centrifuge enrichment plant—forerunner to ACP—was first planned for that site. Our 2005 lack of knowledge about the specificity of impact is only due to the lack of study and acknowledgement for 28 years. That abrogation of responsibility cannot now be rewarded by saying that because no one knows anything about this, and no one wants to say anything about this, therefore nothing can be concluded for sure.

It is not Petitioner's job, at this stage, to quantify an impact that the Applicant has kept secret from the world for twelve years (and DOE for 28). All that can be done, and it has been done, is to have experts in cultural resource assessment say, as they do, that this is an issue that demands a protocol for research and impact assessment. Indeed the language of NHPA impact assessment speaks of "APE"—Areas of Potential Impact, not of certain impact. NHPA impacts are rarely certain and so cultural resource specialists do not talk in those terms. Quantification comes later, if at all, as the requisite studies are performed and as the Applicant is required to divulge necessary details about the site and their future plans. It should be noted that the whole issue of future water pumping at the GCEP Water Field is absent from USEC's Environmental Report.

In a note on page 16 of its Answer, USEC presents a convoluted argument about the legal distinction between USEC Inc., and its wholly-owned subsidiary, the United States Enrichment Corporation. USEC attempts to argue that since it will not sublease the GCEP Water Field from its own subsidiary, the well field is therefore not a part of the ACP project. This is mere evasion. By this maneuver, USEC could simply choose to transfer any part of the ACP project that involves contentious impact to its own wholly-owned subsidiary. Legal word play—not material fact.

On the question of the impact on Petitioner's home of the opening and refurbishment of the southwest access road, NRC Staff looks for some procedural flaw and imagines it finds one in the lack of expert testimony. This is a simple oversight on the Staff's part. The photograph showing a part of the entrance gate to the southwest access road and the Barnes Home, is not part of a new contention. It was filed as a supplement to the material already presented with the original petition. That material

included an expert statement from Professor John Hancock, Professor of Architecture at the University of Cincinnati. That statement included the following passage:

> "The preservation of this site [the whole Barnes Works including the major portion of the former Barnes estate] has at least two major benefits:....it will strengthen the resource base for the increasingly lucrative cultural heritage tourism industry and the potential for its associated *high-quality, non-intrusive economic development in southern Ohio.*"

By "non-intrusive economic development," Professor Hancock did mean: not involving putting roads and gates with fluorescent orange and yellow warning signs in immediate proximity to historic National Register sites that are being developed for tourism and public education. (Petitioner also provided a wealth of information about the historic value and importance of the Barnes Home and his plans to develop it as a site for tourism.) There are only so many ways to say it, and Professor Hancock said it: ACP will impact the constellation of historic properties on its boundary (consisting of the Barnes Home, the Sargent Home, the Rittenour Home, The Sargent Pigeon kill-site, the Barnes Works, and associated earthworks). These impacts are physical, aesthetic and economic and are precisely those sorts of impacts that the National Historic Preservation Act was enacted to prevent and modify. As to the timeliness of the photograph, since the road and gateway are undergoing a constant process of modification and "upgrade," Petitioner was justified in submitting a photo that was taken as near to filing as possible.

USEC criticizes the Petitioner for failing to accept the word of USEC's attorney that the southwest access road will be closed prior to operation of the ACP (page 5). Petitioner does not recognize USEC's counsel as any kind of authority on this question. USEC has elsewhere maintained that operation of the southwest access road is

"beyond scope" because it is a DOE responsibility. If it's a DOE responsibility, how can USEC counsel give assurances about the road's future? And where is any of this written down? On page 13 of its Answer, USEC indeed acknowledges that it, not DOE, makes decisions about the opening or closing of that road. If an Applicant can make an unsupported assertion that a future impact will be eliminated at its discretion, then no future impact would ever be admissible. All that the Petitioner knows for sure is that, on schedule with ACP's lead cascade, the southwest access road has been opened, its gateway refurbished and painted in fluorescent shades of yellow and orange. At the least, this issue presents a real dispute in fact that should be admitted for hearing.

There is a genuine issue of fact regarding the impacts of ACP on surrounding historic properties. These impacts cannot be quantified in the same manner as, say, the radiological impact of plant emissions. Petitioner submitted two expert statements from Thomas F. King, who is the principal author of Section 106 of NHPA, that speak to the difference between easily quantified impacts as assessed under NEPA, and qualitative impacts that generally arise under NHPA. The standards used for admitting one type of impact cannot be applied to the other. Petitioner has certainly met his burden with regard to admissibility of his contention on impacts.

On page 10, NRC staff refers to an "ironclad obligation" petitioner has to review publicly available documents, by way of barring admission of sections from the DOE-USEC lease agreement. First of all, the relevance of this document to matters at hand derives from USEC's failure to acknowledge its leasing and control of the Water Field site. If USEC had been forthcoming in these proceedings, the introduction of the lease agreement would not be necessary.

And how could Petitioner obtain this document prior to the proceedings when: a) The publicly available version of the document is not referenced under any header remotely related to this case (it was sheer luck that someone alerted the Petitioner to its existence). The "ironclad obligation" cannot be construed to mean that a Petitioner should retrieve every public document in every federal government repository. b) The relevance of the document was not apparent until DOE disclosed that the reason it could not grant access to the site was that the site is controlled by USEC. The timing by which a Petitioner is required to obtain documents has to be related to the time that they become relevant to issues at hand. Finally, it should be noted that whether the lease agreement is admitted or not, that doesn't change the fact that USEC has leased the Water Field site since 1993. The Panel is entitled to knowledge of this fact. Does USEC deny it? How does USEC explain listening silently while Petitioner discussed access to the Water Field site with the Panel during the pre-hearing conference, when all along, USEC controlled that site? And how does USEC explain listening to the discussion about its own responsibilities under NHPA without disclosing to the Panel that it had signed a contract for regulatory oversight responsibilities with DOE?

The degree to which NRC Staff has become confused about entangled relationships between USEC and DOE is most evident on page 11 of the Staff's Response, where it argues (point unclear) that the DOE-USEC Regulatory Oversight Agreement "has no bearing on the ACP—rather, it is related to the Gaseous Diffusion Plant (GDP) at Piketon."

At the time of the agreement in 1993, the entire site was referred to as the Portsmouth Area Gaseous Diffusion Plant (PAGDP). That was simply the name of the

site. Some of the facilities—including the GCEP buildings and the GCEP Water Field—which had originally been planned as integral to a new centrifuge plant—later became part of ACP. Of course the GCEP facilities are related to ACP, it IS the ACP. It was called the PAGDP site in 1993 because USEC did not yet know which advanced technology it was going to pursue. USEC first pursued AVLIS technology, and if AVLIS had succeeded, then the GCEP buildings and GCEP Water Field would have become part of USEC's AVLIS project. As it is, they have become part of ACP.

Regarding Petitioner's Contention 3.1 on alternative use, NRC Staff again finds fault with the new information for not being accompanied by "special expertise." But the original petition did include such expertise, the expert statement of Roger Kennedy, a former director of the National Park Service. Thus the new information—that a transfer of property from DOE to the Department of Interior for use as a wildlife refuge is feasible—was backed by the prior expert statement that such a transfer should be investigated as Piketon for the purpose of preserving the historic properties proximate to the site. NRC Staff has now attacked each as lacking in some degree, but each supports the other—a concrete legislative initiative backed by an expert statement that makes the proposal relevant to the Piketon site. That is why the contention is admissible.

NRC Staff repeats the assertions from its original Answer that agencies are required only to consider certain types of alternatives. Apparently, NRC Staff failed to read the Petitioner's Reply to that Answer, wherein the Petitioner showed that the unique constellation of private and public interests at the Piketon site require a different kind of alternative assessment. Petitioner also showed that consideration of alternatives under NEPA differs from consideration of alternatives under NHPA. Since Petitioner's

interests lie mostly within the domain of NHPA, it is those, broader, kinds of alternatives—alternatives that recognize and enhance the special qualities of the historic properties that are affected--that are at issue in this case, not the narrow consideration of alternatives that the Staff is habitually conditioned to apply. Under NHPA there simply is no limitation to consideration of alternatives with the same stated aim as the proposed project.

The Staff again falls into bad habits in its response to Petitioner's new information regarding the DOE-USEC relationship and economics. First, there is a spurious comment on page 14 about "pulling publicly-available articles off the internet." That applies to neither piece of new information. The report of the DOE Office of Inspector General and subsequent elaborative remarks by DOE field office manager Bill Murphie are just that—information from the government offices charged with overseeing the DOE-USEC relationship. An IG report from a federal agency, with follow-up information, is considered the highest quality form of evidence. The fact that it may be publicly available is irrelevant.

Spencer Jakab, author of the two articles from *Barron's*, is one of the most knowledgeable experts following developments in the uranium enrichment industry. Writers for Dow-Jones are not just reporters, they are analysts. *Barron's,* the weekly version of the *Wall Street Journal*, is generally considered a leading authority for the investment community. It is not available on the internet except by subscription. We aren't talking about *People Magazine* here, we're talking about a publication that guides investors, on an issue that relates directly to USEC's ability to maintain investor confidence. If NRC Staff wants to know whom Petitioner would call upon for expertise,

he would call Spencer Jakab himself, analysts for Longenecker Associates whom Jakab cites, and other industry analysts who have followed USEC's spin-cycles quite closely.

NRC Staff keeps saying that "DOE and its relationship to USEC...is beyond the scope of this proceeding" (page 15). The whole point of the DOE IG's report, however, is that at the Piketon site, there is no distinction or way to demarcate DOE and USEC. DOE has been improperly (and perhaps illegally) conducting USEC activities and paying USEC expenses. If you place these DOE activities beyond scope, you put a substantial part of USEC and the ACP project beyond scope. You also encourage improper or illegal activity. In other words, the IG's report brings DOE activities at the Piketon site necessarily within the scope of these proceedings. Get over it.

Finally, NRC Staff misses the point of Petitioner's contention when it complains that Petitioner fails to cite USEC's financial data from the license application. Here, the Staff is arguing against the contention that it wishes the Petitioner would make, not the one he is actually making. Petitioner is not concerned about USEC failing to finance ACP in the short term and canceling the project up front. If that happens and happens quickly, so be it. No, the scenario that concerns the Petitioner and threatens his interests is one on which USEC scams its way to a license and to start-up funding, using illegally diverted public funds from DOE to do so. In that scenario, USEC would then begin operations at ACP, contaminating the GCEP buildings, damaging the earthworks at the Water Field site, condemning the entire site as a nuclear dumping-ground, impacting the neighboring historic properties economically and aesthetically. THEN, after it is up and running, the scam would be revealed, as it must be, operations would shut down precipitously, and Piketon would be left to a future of stigma and

contamination. Alternative use options would at that point be foreclosed. This is the likeliest scenario if ACP gets an NRC license, and it is a scenario about which USEC's license application has nothing to say. It is to ward off that scenario that Petitioner's new information and his Contention 7 must be admitted.

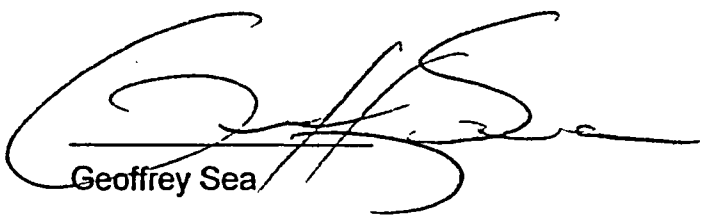
In summation, Petitioner believes that DOE and USEC jointly and sequentially had the responsibility to preserve and publicize the ancient earthworks that extend along the Scioto River on federal land. Instead they actively colluded to keep these earthworks secret, and to threaten them with a well-field designed to pump water to a future centrifuge enrichment plant. Now they seek to enlist the Nuclear Regulatory Commission in this collusion, wishing the earthworks away with a wave of the procedural wand. USEC consistently withheld the knowledge that it, together with its eponymous subsidiary, leases and controls the Water Field site where the earthworks are located. This deception might subject USEC to sanctions in most courts. Even now, USEC refuses to acknowledge the existence of the earthworks, and it seeks even to bar the admission of its lease agreement for that land, so as to maintain the fiction that it is uninvolved.

Finally, Petitioner is aware of the complaints that mailed versions of his August 17 filings did not arrive in Washington and Maryland until quite long after they were postmarked. The packages were given first-class postage and placed in a US mailbox in Portsmouth, Ohio, in the late afternoon of August 17. They should have born a postmark of either the 17th or 18th. Apparently, the packages to USEC and NRC did not arrive until the last days of August. The package to the Secretary's office, postmarked August 18, reportedly did not arrive until today, September 6. Petitioner had no control

over this unreasonable delay, but given the experience, future mailings will not be made from Portsmouth.

Petitioner has demonstrated that he made every effort to obtain and file information essential to the protection of his interests in as timely a manner as was possible, and meeting all balancing tests for admissibility. The new information, his filings of August 17, and his contentions as amended, should be admitted.

Respectfully submitted,



Geoffrey Sea

September 6, 2005

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Filed September 6, 2005
USEC Inc. (American Centrifuge Plant)	)	Docket No. 70-7004

CERTIFICATE OF SERVICE

I hereby certify that copies of **Reply to Answer of USEC and Response of NRC Staff to Petitioner's Filings of August 17** in the above-captioned proceeding have been served on the following by deposit in the United States mail, and by electronic mail on this 6th day of September, 2005.

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